

11 CV 0541

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SHAHAB KARMELY and SK GREENWICH LLC, :

Plaintiffs, :

vs. :

EITAN WERTHEIMER, EZRA DAGMI, ANGLO
IRISH BANK CORPORATION LIMITED, W-D
GROUP (2006) LP, W-D GROUP NY1, LLC, and
JOHN DOES 1-10,

Defendants. :

----- Civil Action No. S.D.N.Y.

RECEIVED
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Supreme Court of the State of New
York, New York County,
Index No. 650113/2011

----- X

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

NOTICE OF REMOVAL

Please take notice that on this date that the Defendants, by and through their undersigned counsel, submit this Notice of Removal pursuant to 28 U.S.C. §§ 1441(a), 1441(d) and 1446, removing this action from the Supreme Court of the State of New York, New York County, in which the action is currently pending, to the United States District for the Southern District of New York. All Defendants join in this Notice of Removal. Original jurisdiction exists under 28 U.S.C. § 1332.

Background

1. The State Court Action (defined below) arises out of a failed real estate venture. In 2006, Plaintiff SK Greenwich LLC (“SK Greenwich”) and Defendant W-D Group NY1, LLC (“W-D Group LLC”) — a limited liability company of which Defendant W-D Group (2006) LP (“W-D Group LP”) is the sole member — formed an entity called 443 Greenwich Partners LLC (“Greenwich Partners”) to purchase a building in New York City. Greenwich Partners funded

part of the purchase price by obtaining a mortgage loan from Defendant Anglo Irish Bank Corporation Limited (“AIB”).

2. Plaintiffs commenced this action on or about January 14, 2011, by purchasing an index number in the Supreme Court of the State of New York, New York County (Index No. 650113/2011) (the “State Court Action”) and filing a summons with notice (the “Summons”). A copy of the summons is attached hereto as Exhibit A.

3. Defendants received notice of the State Court Action on January 19, 2011, when certain Defendants — namely, Eitan Wertheimer and AIB — received copies of the Summons. In accordance with Section 3012(b) of the New York Civil Practice Law and Rules, the Summons was filed and delivered to these Defendants without a complaint.

4. The Summons alleges that Defendants engaged in “misconduct in connection with [the] real estate development at 443 Greenwich Street” and related loans and agreements, including the AIB mortgage loan. Accordingly, the Summons claims that Defendants are “jointly and severally liable” to Plaintiffs “in an amount that exceeds \$40,000,000.00.”

Removal of the State Court Action is Proper

5. Removal is proper here pursuant to 28 U.S.C. § 1441(a) because this Court has original jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1332(a)(2). Removal is also proper here pursuant to 28 U.S.C. § 1441(d) because Defendant AIB is a “foreign state” within the meaning of 28 U.S.C. § 1603.

Section 1441(a) removal

6. Complete diversity of citizenship exists under § 1332(a)(2) because the State Court Action “is between . . . citizens of a State and citizens or subjects of a foreign state,” and the amount in controversy exceeds the \$75,000 threshold established by § 1332(a). Plaintiffs

Shahab Karmely and SK Greenwich are both citizens of New York, and all of the Defendants are citizens of foreign states for purposes of diversity jurisdiction. More specifically: Defendants Eitan Wertheimer, W-D Group LP, and W-D Group LLC are citizens of Israel; Defendant Ezra Dagmi is a dual-citizen of Israel and the United Kingdom; and Defendant AIB is a citizen of Ireland. (The citizenship of the John Doe Defendants is irrelevant for the purposes of diversity jurisdiction. See 28 U.S.C. § 1441(a).)

7. Plaintiff Shahab Karmely, a natural person, is a citizen of New York. Plaintiff Karmely is a naturalized citizen of the United States who maintains his permanent residence and domicile in New York at 48 East 81st Street, New York, New York 10028.

8. A limited liability company, such as Plaintiff SK Greenwich, has the citizenship of its membership. Handelsman v. Bedford Village Assocs. Ltd. Pshp., 213 F.3d 48, 51–52 (2d Cir. 2000). Plaintiff Shahab Karmely is the sole member of Plaintiff SK Greenwich. Accordingly, Plaintiff SK Greenwich, like Plaintiff Karmely, is a citizen of New York for purposes of diversity jurisdiction.

9. Defendant Eitan Wertheimer, a natural person, is a citizen of Israel. Defendant Wertheimer maintains his personal residence and domicile in Israel.

10. Defendant Ezra Dagmi, a natural person, is a dual-citizen of Israel and the United Kingdom. Defendant Dagmi maintains his personal residence and domicile in Israel.

11. A limited partnership, such as Defendant W-D Group LP, has the citizenship of each of its general and limited partners. Carden v. Arkoma Assocs., 494 U.S. 185, 195–96 (1990). Here, the general partner of Defendant W-D Group LP is W-D Group Ltd., and the only limited partners of Defendant W-D Group LP are Micro-Dent Ltd. and 4 D Assets (2000) Ltd. W-D Group Ltd., Micro-Dent Ltd., and 4 D Assets (2000) Ltd. are all incorporated in Israel and

have their principal places of business in Israel and are thus citizens of Israel for purposes of diversity jurisdiction. See 28 U.S.C. § 1332(c)(1). As a result, Defendant W-D Group LP is a citizen of Israel for purposes of diversity jurisdiction.

12. As noted above, a limited liability company, such as Defendant W-D Group LLC, has the citizenship of its membership. Defendant W-D Group LP is the sole member of Defendant W-D Group LLC. Accordingly, Defendant W-D Group LLC, like Defendant W-D Group LP, is a citizen of Israel for purposes of diversity jurisdiction.

13. Finally, the amount in controversy requirement of 28 U.S.C. § 1332(a) — \$75,000 — is also clearly satisfied. In the Summons, Plaintiffs claim to have suffered damages in an amount that exceeds \$40 million.

Section 1441(d) removal

14. Defendant AIB is a “foreign state” within the meaning of 28 U.S.C. § 1603 and may therefore remove this action pursuant to 28 U.S.C. § 1441(d). Pursuant to Anglo-Irish Bank Corporation Act 2009, Defendant AIB’s shares are owned by the Minister for Finance of the Republic of Ireland, and therefore Defendant AIB is an “agency or instrumentality” of the Republic of Ireland. See 28 U.S.C. § 1603(b).

Removal

15. Defendants hereby exercise their rights under 28 U.S.C. § 1441(a) to remove the State Court Action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York.

16. Defendant AIB also exercises its rights under 28 U.S.C. § 1441(d) to remove the State Court Action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York.

17. This Notice of Removal is timely filed. Defendants received notice of the State Court Action on January 19, 2011. *See* 28 U.S.C. § 1446(b) (notice of removal must be filed “within thirty days after the receipt by the defendant, through service or otherwise” of the relevant pleading).

18. As noted above, a copy of the Summons is attached hereto as Exhibit A. Removal on the basis of the Summons is proper. As this Court has previously held, “[t]here is ample and, under these facts, persuasive precedent for finding that a summons and notice constitute an ‘initial pleading’ for removal purposes.” *Yoo v. Li*, No. 96 CIV. 2206 (LAP), 1996 WL 417517, at *1 (S.D.N.Y. July 25, 1996); *Village of Westville v. Atl. Richfield Co.*, 608 F. Supp. 497, 499 (W.D.N.Y. 1985) (allowing removal despite lack of complaint where Summons with Notice qualified as an “initial pleading” under 28 U.S.C. § 1446(b)).

19. Pursuant to Local Civil Rule 81.1(b) of the Southern District, Defendants intend to file with the clerk of this Court a copy of all additional records and proceedings, if any, in the state court within twenty (21) days of the filing of this Notice of Removal, unless otherwise ordered by the Court.

20. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, New York County, and Defendants will give written notice of the filing of this Notice of Removal to Plaintiffs.

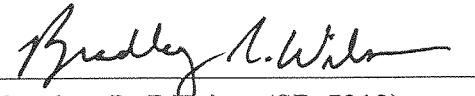
21. By filing this Notice of Removal, Defendants do not waive any defenses that may be available to them, including, but not limited to, any objections to personal jurisdiction or venue or any defense for failure to state a claim.

22. Defendants reserve the right to amend or supplement this Notice of Removal.

Dated: January 26, 2011
New York, New York

WACHTELL, LIPTON, ROSEN & KATZ

By:

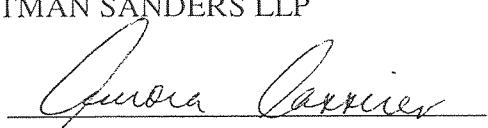


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W-D Group NY1 LLC*

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*Attorneys for Defendant Anglo Irish Bank
Corporation Limited*

EXHIBIT A

JAN-19-2011 14:57

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHAHAB KARMELY and SK GREENWICH LLC,

Plaintiffs,

- against -

EITAN WERTHEIMER, EZRA DAGMI, ANGLO IRISH
BANK CORPORATION LIMITED, W-D GROUP (2006)
LLP, W-D GROUP NY1 LLC, and JOHN DOES 1-10

Index No. 650113/11

Date Purchased: 1/14/11

SUMMONS WITH NOTICE*Defendants.*

To the above-named defendants:

YOU ARE HEREBY SUMMONED to appear in this action by serving a Notice of Appearance on plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York.

TAKE NOTICE that the nature of this action and the relief sought is as follows:

This is an action against Eitan Wertheimer, Ezra Dagmi, W-D Group (2006) LLP, W-D Group NY1 LLC, and John Does 1-10 (collectively, the "W-D Defendants") for, among other things, fraud, breach of fiduciary duties, fraud-in-the-inducement, breach of contract, tortious interference with contract and business relations, aiding and abetting and conspiracy to commit the foregoing tortious acts, and declaratory relief arising out of the W-D Defendants' misconduct in connection with a real estate development at 443 Greenwich Street, New York, New York, the mortgages, loans, agreements, and guarantees made in connection with that property, and the operating agreements between some of the W-D Defendants and the Plaintiffs. The action against Anglo-Irish Bank Corporation Limited ("Anglo Irish") is for, among other things, breach of contract, aiding and abetting the W-D Defendants tortious acts arising out of Anglo-Irish improperly enabling the W-D Defendants to achieve the object of their conspiracy.

Therefore, as a result of the foregoing actions, Plaintiffs have been damaged in an amount that exceeds \$40,000,000.00 and Plaintiff SK Greenwich LLC has been denied its lawful rights and interests in 443 Greenwich LLC. Plaintiffs further seek a declaratory judgment holding that certain guarantees and other personal commitments made by Plaintiff Shahab Karmely to Anglo Irish are unenforceable and void due to Anglo Irish's unlawful and tortious conduct. Defendants are jointly and severally liable.

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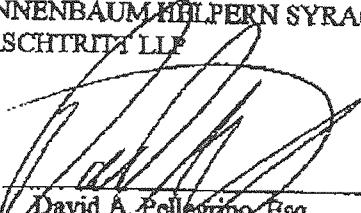
PLEASE TAKE FURTHER NOTICE THAT in case of your failure to appear, judgment will be taken against each of you, jointly and severally, by default for the sum of \$40,000,000.00 plus interest, legal fees, and the costs and disbursements in this action.

The basis for venue designated is where at least one of the defendants resides which in the case of defendant Anglo Irish Corporation Limited is 222 East 41st Street, New York, New York 10017.

Dated: New York, New York
January 14, 2011

TANNENBAUM HELPERN SYRACUSE &
HIRSCHTRITZ LLP

By:


David A. Pollegio, Esq.
Attorneys for Plaintiff
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TO: Eitan Wertheimer
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Ezra Dagni
c/o Stephen R. DiPrima, Esq.
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Anglo Irish Corporation Limited
222 East 41st Street, 24th Floor
New York, New York 10017

W-D Group (2006) LLP
c/o Stephen R. DiPrima, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019-6150

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHAHAB KARMELY and SK GREENWICH LLC,

Plaintiffs,

- against -

EITAN WERTHEIMER, EZRA DAGMI, ANGLO IRISH
BANK CORPORATION LIMITED, W-D GROUP (2006)
LLP, W-D GROUP NY1 LLC, and JOHN DOES 1-10*Defendants.*Index No. 650113/11
Date Purchased: 1/14/11STATEMENT IN SUPPORT
OF ASSIGNMENT TO
COMMERCIAL DIVISION

David A. Pelegriño, a member of Tannenbaum Helpern Syracuse & Hirschtritt LLP, attorneys of record for plaintiffs SHAHAB KARMELY and SK GREENWICH LLC in this matter, submits this Statement and the accompanying copy of the pleadings, pursuant to Section 202.70(d)(2) of the Uniform Rules for the Trial Courts, in support of the request of said party that for the assignment of this matter to the Commercial Division of this Court.

1. I have reviewed the standards for assignment of cases to the Commercial Division set forth in Section 202.70. This case meets those standards and I therefore request that this Case be assigned to the Division.

2. The sums at issue in this case (exclusive of punitive damages, interest, costs, disbursements, and counsel fees claimed) are equal to or in excess of the monetary threshold of the Division in this county as set out in Subdivision (a) of said Section in that the damages the plaintiff seeks will exceed \$150,000.00 in the event the plaintiffs succeed on their claims.

3. This case falls within the standards set out in Subdivision (b) of the Section and does not come within the groups of cases set out in Subdivision (c) that will not be heard in the Division, in that the plaintiff asserts claims for monetary damages for fraud and breach of

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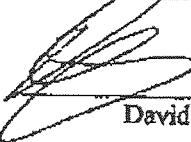
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contract and is not bringing suit to collect professional fees, for a declaratory judgment as to insurance coverage, to resolve a real estate dispute involving landlord-tenant matters or rent payments, to enforce a judgment, to collect insurance premiums, or to assert attorney malpractice.

Dated: January 14, 2011
New York, New York

TANNENBAUM HELPERN SYRACUSE &
HIRSCHTRITZ LLP

By:



David A. Pellegrino, Esq.

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Attorneys for Plaintiffs

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Case Caption: **SHAHAB KARMELY et al - v. - EITAN WERTHEIMER et al**

SEARCHED		INDEXED	
1. SUMMONS WITH NOTICE		SUMMONS WITH NOTICE dated 1/14/11	
2	STATEMENT IN SUPPORT OF REQUEST FOR ASSIGNMENT OF ASSIGNMENT TO TO THE COMMERCIAL DIVISION	STATEMENT IN SUPPORT COMMERCIAL DIVISION dated 1/14/11	01/14/2011 04:42 PM
			01/14/2011 04:42 PM



SUMMONS WITH NOTICE dated 1.14..



STATEMENT IN SUPPORT OF ASSIGN

Confirmation Notice

This is an AUTOMATED response for Supreme Court / Court of Claims cases.
The NYS Courts E-Filing web site has received document(s) from the filing user DAVID A PELLEGRINO for case/claim number

SHAHAB KARMELY et al - v. - EITAN WERTHEIMER et al

E-mail Notifications Sent to: PELLEGRINO, DAVID A - pellegrino@thshlaw.com;

Your electronically filed document(s) and credit card information have been received. A case/claim number will be issued after processing by the County Clerk/Court of Claims. You will be notified of the case/claim number by e-mail.